No. 70-188

In the Supreme Court of the United States

OCTOBER TERM, 1971

PECOLA ANNETTE WRIGHT, ET AL., PETITIONERS

v.

COUNCIL OF THE CITY OF EMPORIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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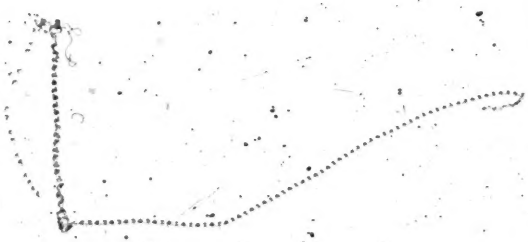

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INTEREST OF THE UNITED STATES

The United States has substantial responsibility under 42 U.S.C. 2000c–6, and 2000d in the area of school desegregation. The outcome of this case will affect that enforcement responsibility. While the government did not participate in this case in the courts below, the issues presented are related to those presented in *United States* v. *Scotland Neck City Board of Education*, No. 70–130, now pending before this Court.

STATEMENT

In 1965, the schools in Greensville County, Virginia, were completely segregated on the basis of race (App. 15a). All of the white children attended schools in Emporia, a community located near the center of the

county; all of the black children attended either schools in the outlying county or Greensville County Training School, an elementary school in Emporia (App. 15a, 130a).

In March 1965, petitioners—black school children living in the county and their parents or guardians—sued the county School Board to require compliance with *Brown I*[1] and *Brown II*.[2] (App. 2a–11a). One month later the Board proposed a freedom-of-choice plan (App. 16a). The district court approved this plan in January 1966, but cautioned that the "plan must be tested * * * by the manner in which it operates to provide opportunities for a desegregated education" and is "subject to review and modification in the light of its operation" (App. 24a).

By the 1967–68 school year very little desegregation had resulted. At this time there were 4146 children enrolled in public schools in the county; 62 percent of the children were black, 38 percent were white (App. 294a). The five formerly all-black schools, which included four elementary schools and one high school, were still attended only by black children (*id.*). In the two formerly all-white schools (a high school and an elementary school), both of which were in Emporia, 94 percent of the students were white (*id.*). The dual school system thus remained virtually intact.

In the summer preceding the 1967–68 school year, the Town of Emporia became a city of the second class[3] and thereby became obligated to maintain a

[1] 347 U.S. 483.

[2] 349 U.S. 294.

[3] Va. Code Ann. § 15.1–978, see especially § 15.1–983.

general system of free public schools (App. 118a, 226a–227a).[4] The newly-appointed city school board then began negotiations with county officials to work out a satisfactory educational arrangement for city residents (App. 227a–228a).[5] Meanwhile, for all the children in the county, including those living in Emporia, the traditional attendance pattern continued (App. 227a, 294a).

When the county Board of Supervisors rejected a proposal for a joint county-city operation (App. 30a), the city, in April 1968, agreed that the Greensville County School Board would continue to provide public schools for the City of Emporia (App. 32a–36a). Expressing dissatisfaction with this arrangement, city officials contended that they had been forced into the agreement by the threat of the county officials to terminate public school services to students residing in the city (App. 305a): Between April 1968 and June 1969, however, no efforts were made to terminate the agreement nor were any studies conducted concerning the feasibility of other methods of operating the schools (App. 136a, 147a–149a).

In the summer of 1968, after this Court's decision in *Green* v. *County School Board of New Kent County,* 391 U.S. 430, petitioners filed a motion for further relief seeking a new desegregation plan for the Greensville County schools that would promise realistically to convert the school system to a unitary non-racial operation (App. 37a). The district court

[4] Va. Code Ann. § 22–1 and § 22–93.

[5] Virginia law provided several alternative methods of school operation. Va. Code Ann. §§ 22–7, 22–99, and 22–100.1 to 22–100.2; see also Petitioners' Brief, at p. 5 n. 6; App. 300a.

ordered the county School Board to prepare such a desegregation plan (App. 50a). After various delays, the Board in January 1969 submitted a plan that, if accepted, would have continued freedom-of-choice with minor modifications (App. 38a, 51a).

After further hearings and other proceedings, during which the county Board submitted a report and petitioners proposed a plan for desegregating the county schools, the court on June 23, 1969, found that the county Board's plan would merely substitute one segregated system for another (App. 46a–47a, 50a–52a). The court therefore ordered the county Board to implement petitioners' plan for the upcoming 1969–1970 school year (App. 52a–53a). This plan eliminated the dual attendance patterns by a zoning-pairing arrangement for students in grades 1–4, who would attend the four formerly all-black elementary schools, only one of which was in Emporia; grades 5–6 would be served by the formerly all-white Emporia Elementary School; grades 7–9 would be served by the formerly all-black Wyatt High School in the county; and students in grades 10–12 would attend the formerly all-white Greensville County High School in Emporia (App. 46a–47a).[6]

Two weeks later, on July 7, 1969, the city Council sent a letter to the county Board of Supervisors stating in part (App. 56a):[7]

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[6] At no time during the pendency of the above matter did the city Council or the city School Board meet, or otherwise confer, with the county officials in an attempt to devise a different plan of student assignment to the county schools (App. 182a–183a, 193a).

[7] See also App. 163a, 235a.

> In 1967–68 when the then Town of Emporia, through its governing body, elected to become a city of the second class, it was the considered opinion of the Council that the educational interest of Emporia Citizens, their children and those of the citizens and children of Greensville County, could best be served by continuing a combined City-County school division, thus giving students from both political subdivisions full benefits of a larger school system.

The letter then stated that the court-ordered desegregation plan had changed the situation to such an extent that the city had decided to establish a separate system (App. 57a). The city offered several reasons for this decision: (1) the court's order required "massive relocation of school classes," "excessive bussing of students,"[8] mixing of students without regard to "individual scholastic accomplishment or ability";[9] and (2) the city students did not contribute to the "inbalance" [sic] in the school system[10] (App. 57a). The Mayor later testified that city officials desired to prevent the emergence of a private school system and

[8] The three elementary schools located in the county were within a mile or two of the city limits (App. 132a, 133a).

[9] The only "ability grouping" plan ever considered by the County School Board, so far as the record indicates, was a proposal presented after the district court hearing of February 1969. Apparently, no such assignment plan had ever been used by the school system in the past (App. 40a–45a).

[10] The record, however, is to the contrary. In the 1968–1969 school year, 543 white and 580 black students resided in the city (App. 304a) yet only 98 black students attended the two white schools in the city, while 387 black and no white students attended Greensville County Training School, which was also located in Emporia (App. 130a, 298a).

wanted to "kill this private school business before it got started" (App. 121a–122a).

The city's letter concluded by proposing termination of the existing city-county agreements, establishment of a procedure for equity settlement, and immediate transfer of title to all school property "in the Corporate Limits" to the city (App. 58a–60a). Student transfers from the county would be accepted by the city on a tuition, no transportation basis (App. 60a).[11]

The county School Board refused to agree because of its obligations under the district court's order and because "this Board believes that such action is not in the best interest of the children in Greensville County * * * " (App. 69a). The State Board of Education tabled the city's request to establish the city as a school division "in light of matters pending in the federal court" (App. 198a).[12]

If the city's proposals had been implemented, three schools—Emporia Elementary, Greensville County Training, and Greensville County High School—would

[11] The city officials later stated that they would not allow transfers until they were permitted to do so by the district court (App. 319a n. 3).

[12] Meanwhile, at the request of the county School Board, the district court modified the desegregation plan on July 30, 1969. (App. 85a). The modified plan established the following attendance pattern:

Grades and school:	*Located in*
1–2–3, Emporia Elementary	City.
4–5, Moton Elementary	County.
5–6, Belfield Elementary	County.
7, Zion Elementary	County.
8–9, Junior High (Wyatt High)	County.
10–11–12, Senior High (Greensville County High)	City.
Special Education, County Training	City.

have been removed from the county system. These schools, which had served 2111 students in 1967–1968 (App. 294a), would be available for the 1123 city students in the school year beginning in 1969 (App. 304a).[13] The other four schools in the County—Moton, Zion, Belfield and Wyatt High School, which had served a total of 2025 students (all black) in 1967–1968—would be available in 1969 for the remaining 2616 students in the County (App. 304a).

Moreover, with separate city and county school systems, 52 percent of the city's students would be black and 48 percent would be white,[14] while 72 percent of the county's students would be black and 28 percent would be white[15] (App. 304a). The formerly all-white city high school would have a white majority (52 percent white and 48 percent black) (App. 304a). If all schools in the county were operated as a single system, as they had been in the preceding years when the students were segregated on the basis of race, 66 percent of the students would be black, and 34 percent would be white (App. 304a).[16]

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[13] The Mayor of Emporia testified that the city system would not need, and did not desire, to use the formerly all-black Greensville County Training School, which he said was "in bad shape" (App. 120a, 134a). He further testified that the three elementary schools located in the county were on "inferior sites" and situated in "out-of-the-way places" (App. 133a).

[14] There would be 580 black students and 543 white students (App. 304a).

[15] There would be 1888 black students and 728 white students (App. 304a).

[16] There would be 2477 black students and 1282 white students (App. 304a).

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On August 1, 1969, petitioners filed a supplemental complaint naming the city Council and city school board members as defendants and seeking to enjoin them from forming a separate school system (App. 84a–87a). After a hearing, the district court issued a preliminary injunction on August 8, 1969, prohibiting the city officials from interfering with implementation of the court's previous order (App. 195a). See n. 6 *supra*).

Three months later, the city began a study to determine the feasibility of operating a separate city school system (App. 200a). The proposed school budget and educational program submitted on December 3, 1969, after completion of the study (App. 200a, 202a–203a), indicated that the city would have more wealth per child than the county (App. 208a), but that the city system would be so small [17] that operation would be more costly (App. 207a–208a). The proposed budget would have required a 30 percent increase in city taxes in order to support the system (App. 291a).

After a hearing on December 8, 1969, the district court issued an opinion and order on March 2, 1970, enjoining operation of a separate city school system until further order of the court (App. 293a, 310a). The court held that the city officials were successors, at least in part, to the powers of the county officials

[17] The city school board's expert testified that the optimum high school would be 1200–1500 students (App. 283a). Neither the county nor the city, if divided, would approach that student population (App. 304a, 305a). In the combined system, however, there would be 1428 students in grades 8–12 (App. 297a).

and, therefore, subject to the previous desegregation decree. Accordingly, the court treated the city officials' application as a motion to modify that decree (App. 298a–303a).

Considering the proposal on that basis, the court found that establishment of a separate city system would cause a substantial shift in the racial composition of the schools under the existing plan.[18] The city system would have an elementary school with a slight black majority and a high school with a slight white majority;[19] all grades in the county, on the other hand, would be more than two-thirds black (App. 304a–305a). The city's proposal would have adverse effects on the remaining county system (App. 306a–307a) and "would make the successful operation of the [existing] unitary plan even more unlikely" (App. 306a). The court also found that the motives of the city officials for their decision were mixed, but that race was a factor since the city acted in order to make the schools more attractive to white residents so that they would not send their children to private schools, as they might have done if the schools were operated in accordance with the court's desegregation order (App. 305a, 307a).

Relying on *Monroe* v. *Board of Commissioners*, 391 U.S. 450, the court concluded that it could not accept the city's proposal because the city could not show "that such a plan will further rather than delay con-

[18] See p. 7 *supra*.

[19] The white percentage could be expected to increase if, as the city officials predicted, students returned to the city schools from private schools (App. 304a).

version to a unitary, nonracial, nondiscriminatory school system," 391 U.S. at 459 (App. 308a). The court noted, however, that there were a number of alternative methods of operation open to the city, including joint city-county operation or operation of a separate city system if it would not "so prejudice the prospects for [a] unitary [system]," and that the court would modify its decree in the future for good cause shown (App. 309a).

The court of appeals, sitting *en banc*,[20] reversed (App. 311a–319a). Focusing principally on the "shift in the racial balance" that would result from proposed redistricting, the majority applied the following standard to determine the validity of the city's attempted withdrawal from the county system (App. 313a):

> If the creation of a new school district is designed to further the aim of providing quality education and is attended secondarily by a modification of the racial balance, short of resegregation, the federal courts should not interfere. If, however, the primary purpose for creating a new school district is to retain as much of separation of the races as possible, the state has violated its affirmative constitutional duty to end state supported school segregation.

The court compared the racial composition of the county system before and after Emporia's secession—66 percent black and 34 percent white before, as compared with 72 percent black and 28 percent white

[20] Judges Sobeloff and Butzner did not participate (App. 311a).

after [21]—and concluded that the city did not seek to separate from the county system in order to perpetuate segregation (App. 316a). In the majority's view of the record, the city's predominant purpose or motivation [22] in withdrawing was not to discriminate on the basis of race, but rather to improve the quality of the schools and to alleviate unfair tax allocations (App. 314a, 316a–317a).

Judge Winter dissented (App. 336a). In his view, the validity of the city's action should be judged in light of the test established by this Court in *Green, supra*—that a proposed method of school operation less effective than an existing and workable desegregation plan bears a heavy burden of justification (App. 337a). Applying that standard to the instant case, he concluded that the 20.5 percent difference in white student population between the city and county, as well as the other deleterious effects of separation, were not justified by the reasons advanced by the city (App. 340a–342a).

ARGUMENT

For fifteen years after *Brown I* the schools in Greensville County remained racially segregated. Finally in June 1969, four years after petitioners instituted their suit seeking desegregation, the district court ordered the county School Board to implement a plan that would dismantle the existing dual system. The validity of the city of Emporia's attempt, two

[21] But see n. 23 *infra*.

[22] The court used "purpose" and "motivation" interchangeably throughout the opinion (App. 314a, 316a–317a).

weeks later, to immunize itself from the imminent desegregation of the county system by creating its own school district can be assessed only against this background. See *Green* v. *County School Board,* 391 U.S. 430, 437. For the inescapable fact is that until the court's order a dual school system flourished in Greensville County and the traditionally white-only schools in the city of Emporia comprised the white branch of that unconstitutional system.

In these circumstances, the question presented by this case is whether creation of a separate school system for the city would impede the dismantling of the dual system. That the city's proposed action is authorized by state law or that state law allowed the city to deprive the county School Board of authority over the city's school children makes no difference. As this court held in a case decided after the decision of the court below;

> [I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

North Carolina State Board of Education v. *Swann,* 402 U.S. 43, 45. See also *Gomillion* v. *Lightfoot,* 364 U.S. 339.

Thus, what matters is not how withdrawal of the city was to be accomplished, but rather what effect that action would have on the court-ordered desegregation of the schools in the county, including those within the city of Emporia. Since all of those schools had

been operated as a single, segregated system, the city's attempted separation is to be judged in light of the standards applicable to any proposal affecting conversion of a dual system into a unitary one. That is, if creation of separate city and county school systems would give rise to a less effective method of achieving desegregation, there is "at the least * * * a heavy burden upon the [city] to explain its preference" for this course of action. *Green* v. *County School Board, supra,* 391 U.S. at 439; *North Carolina State Board of Education* v. *Swann, supra,* 402 U.S. at 45.

The district court therefore properly considered the schools within the city and those elsewhere within the county as a single system for the purposes of desegregation—just as they had been a single system for purposes of segregation—and viewed the city's attempted withdrawal as a proposed alternative to the plan adopted in the court's outstanding desegregation decree (App. 303a). This approach is in accord not only with the decisions of this Court, but also with the decisions of other courts involving the carving out of new districts from larger districts that are desegregating under court order. *Lee and United States* v. *Macon County Board of Education,* 448 F. 2d 746 (C.A. 5); *Burleson* v. *County Board of Election Commissioners of Jefferson County,* 308 F. Supp. 352, 357 (E.D. Ark.), affirmed, 432 F. 2d 1356 (C.A. 8); *Stout and United States* v. *Jefferson County Board of Education,* 448 F. 2d 403 (C.A. 5).

We also believe that the district court properly concluded that a separate city system would be a less effective method of desegregation and that the

city failed to meet its heavy burden of justification under *Green*. The city system would have had a student population consisting of 52 percent black students and 48 percent white; this would have left the county system 72 percent black and 28 percent white. The substantial disparity in racial composition is apparent.[23] This disparity is all the more significant in light of the fact that the schools to be utilized in the proposed more-white city system, which would increase in racial percentages from 28 percent white to 48 percent white, were the traditionally white-only schools in the county's dual system. Indeed, the city intended to operate one of these two schools—Greensville County High School—with a white majority (App. 284a), a majority the city expected to increase as white students were attracted back from private schools (App. 304a).[24] This is not the way to dismantle a rigid dual school system still functioning 15 years after *Brown I*. It is at the very least a less effective way to eliminate the vestiges of racial segregation than the plan ordered by the district court, see n. 12 *supra*.

Moreover, in exercising its "broad power to fashion a remedy that will assure a unitary school system,"

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[23] If operated as a combined city-county system, it would be 66 percent black and 34 percent white. Judge Winter, in dissent, emphasized the difference between the 28 percent of white students in the county and 48 percent of white students in the city under the new plan, and concluded (App. 340a): "To allow the creation of a substantially whiter haven in the midst of a small and mainly black area is a step backward in the integration process."

[24] The disparity undoubtedly would also have been increased by implementation of the city's transfer provision (see n. 11 *supra*, and accompanying text).

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16, the district court could properly take into account more than the resulting racial percentages if the city's separation were allowed. The district court properly considered the educational advantages of a single system for all the children in the county, including those in Emporia (App. 306a–307a). See *Swann* v. *Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 18–19. It is also significant that all the buildings in the county had been built as black schools and three of them were located on inferior sites in "out-of-the-way" places. On the other hand, the two buildings the city intended to use were the only previously white schools in the county system. Thus, the more-white district would be assigned the previously white schools while the more-black district would be assigned the previously black schools, which were considered inferior.[25] Again, this is not the way to dismantle a dual school system and eliminate the vestiges of racial segregation "root and

[25] In addition, it appears likely (see Defendants' Answers to Plaintiffs' Interrogatories, June 18, 1965, indicating the capacities of the county schools) that the county Board would have had to use at least temporarily, the other, formerly all-black school in the city—Greensville County Training School—which city officials considered in "bad shape" and did not intend to utilize (see note 13 *supra*). This would require transporting county students into the city in essentially the same dual attendance pattern that existed when the county system operated on a segregated basis: students from the more-black district would attend formerly all-black Greensville County Training School in the city while students from the more-white district would attend the formerly all-white Emporia Elementary or Greensville County High Schools, both of which are also in the city.

branch," *Green* v. *County School Board, supra* 391 U.S. at 438.

In our brief in *United States* v. *Scotland Neck City Board of Education,* No. 70–130, this Term, we set forth the reasons why the "primary * * * purpose" test adopted by the court of appeals is, in our view, an improper standard (Pet. Brief, at pp. 26–29);[26] we will not repeat that discussion here. We point out, however, that in this case the sequence of events alone gives rise to an inference that the purpose to avoid the full impact of desegregation played a significant role in the city's decision to withdraw from the county school system, and the district court thus properly found that the city's motives, while mixed, were partially racial (App. 305a, 307a). In the court of appeals' view, the racial motive was not the primary one (App. 316a). But a denial of equal protection of the laws does not depend on whether racial motives predominated; the Constitution does not permit a state to be just a little bit discriminatory. At all events, in this case there is no dispute that the dual system violated the Constitution; the only question is how to remedy that constitutional violation. And, as we have discussed above, the district court properly concluded that a separate city system would result in a less effective remedy for dismantling the dual system.

While the city's desire to provide quality education is commendable, the district court made plain that it would consider any proposed modifications in the

[26] We are furnishing respondents in this case with a copy of our *Scotland Neck* brief.

future that would achieve that end in the context of a unitary operation. This is precisely the approach required by *Brown II, supra,* and by *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19. In these circumstances, the respondents did not satisfy their heavy burden under *Green,* as Judge Winter pointed out in dissent (App. 341a–342a) and, accordingly, the judgment of the district court should have been affirmed.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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FEBRUARY 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972

(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WRIGHT ET AL. *v.* COUNCIL OF THE CITY OF EMPORIA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 70–188. Argued March 1, 1972—Decided June 22, 1972

In 1967, Emporia, Virginia, which is located in the center of Greensville County, changed from a "town" to a politically independent "city" authorized by state law to provide its own public school system. By a shared-cost agreement with the county, Emporia in 1968 continued an arrangement, which antedated its change of status, to use the county public school system for education of its children. As a consequence of the present desegregation lawsuit initiated in 1965, the single school division was operating under a "freedom of choice" plan approved by the District Court. Petitioners moved to modify that plan following this Court's decision in *Green* v. *County School Board*, 391 U. S. 430. The District Court, after a hearing, on June 25, 1969, ordered petitioners' "pairing plan," to take effect as of the start of the 1969–1970 school year. Two weeks after entry of the District Court's decree, the city announced its plan to operate a separate school system and sought termination of the 1968 agreement. On August 1, 1969, petitioners filed a supplemental complaint seeking to enjoin the city council and school board (named as additional parties defendant) from withdrawing Emporia children from the county schools. Following hearings, the District Court found that the effect of Emporia's withdrawal would be a "substantial increase in the proporton of whites in the schools attended by city residents, and a concomitant decrease in the county schools." In addition to the disparity in racial percentages, the court found that the proportion of whites in county schools might drop as county-school whites shifted to private academies, while some whites might return to city schools from the academies they previously attended; that two formerly all-white schools (both better equipped and better located than the county schools) are in Emporia, while all

the schools in the surrounding county were formerly all-Negro; and that Emporia, which long had the right to establish a separate school system, did not decide to do so until the court's order prevented the county from continuing its long-maintained segregated school system. The court concluded that Emporia's withdrawal would frustrate the June 25 decree and enjoined respondents from pursuing their plan. Holding that the question whether new school district boundaries should be permitted in areas with a history of state-enforced racial segregation must be resolved in terms of the "dominant purpose of [the] boundary realignment," the Court of Appeals concluded that Emporia's primary purpose was "benign" and not a mere "cover-up" for racial discrimination, and reversed. *Held:*

1. In determining whether realignment of school districts by officials comports with the requirements of the Fourteenth Amendment, courts will be guided, not by the motivation of the officials, but by the effect of their action. Pp. 10–11.

2. In the totality of the circumstances of this case, the District Court was justified in concluding that Emporia's establishment of a separate school system would impede the process of dismantling the segregated school system. Pp. 11–19.

442 F. 2d 570, reversed.

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, WHITE, and MARSHALL, JJ., joined. BURGER, C. J., filed a dissenting opinion, in which BLACKMUN, POWELL, and REHNQUIST, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 70–188

Pecola Annette Wright et al., Petitioners, v. Council of the City of Emporia et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June 22, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We granted certiorari in this case, as in No. 70–130, *United States* v. *Scotland Neck City Board of Education*,[1] *post*, to consider the circumstances under which a federal court may enjoin state or local officials from carving out a new school district from an existing district that has not yet completed the process of dismantling a system of enforced racial segregation. We did not address ourselves to this rather narrow question in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, and its companion cases decided last Term,[2] but the problem has confronted other federal courts in one form or another on numerous occasions in recent years.[3]

[1] Together with No. 70–187, *Cotton* v. *Scotland Neck City Board of Education*.

[2] The companion cases were *Davis* v. *Board of School Commissioners*, 402 U. S. 33; *McDaniel* v. *Barresi*, 402 U. S. 39; *Board of Education* v. *Swann*, 402 U. S. 43; and *Moore* v. *Board of Education*, 402 U. S. 47.

[3] On the same day that it reversed the District Court orders in this case and in the Scotland Neck cases, the Court of Appeals for the Fourth Circuit affirmed an order enjoining the creation of a new

Here, as in *Scotland Neck*, the Court of Appeals reversed a district court decision enjoining the creation of a new school district. 442 F. 2d 570. We conclude that the Court of Appeals erred in its interpretation of the legal principles applicable in cases such as these, and that the District Court's order was proper in the circumstances of this case.

I

The City of Emporia lies near the center of Greensville County, Virginia, a largely rural area located on the North Carolina border. Until 1967, Emporia was a "town" under Virginia law, which meant that it was a part of the surrounding county for practically all purposes, including the purpose of providing public education for children residing in the county.

In 1967, Emporia, apparently dissatisfied with the County's allocation of revenues from the newly enacted state sales tax, successfully sought designation as a "city of the second class."[4] As such, it became politically independent from the surrounding county, and undertook a separate obligation under state law to provide free public schooling to children residing within its borders.[5] To fulfill this responsibility, Emporia at first

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school district in another county of North Carolina. *Turner* v. *Littleton-Lake Gaston School District*, 442 F. 2d 584. Other cases dealing with attempts to split school districts in the process of desegregation are *Lee* v. *Macon County Board of Education*, 448 F. 2d 746; *Stout* v. *Jefferson County Board of Education*, 448 F. 2d 403; *Haney* v. *County Board of Education*, 410 F. 2d 920; *United States* v. *Texas*, 321 F. Supp. 1043, 1052, aff'd, with modifications, 447 F. 2d 441; *Burleson* v. *County Board of Election Commissioners*, 308 F. Supp. 352 aff'd, 432 F. 2d 1356; *Aytch* v. *Mitchell*, 320 F. Supp. 1372.

[4] Code of Va., §§ 15.1–982.

[5] See Code of Va., § 22–93; *Colonial Heights* v. *Chesterfield County*, 196 Va. 155, 82 S. E. 2d 566 (1954).

sought the County's agreement to continue operating the school system on virtually the same basis as before, with Emporia sharing in the administration as well as the financing of the schools.[6] When the county officials refused to enter into an arrangement of this kind, Emporia agreed to a contract whereby the County would continue to educate students residing in the city in exchange for Emporia's payment of a specified share of the total cost of the system. Under this agreement, signed in April, 1968, Emporia had a formal voice in the administration of the schools only through its participation in the selection of a superintendent. The city and county were designated as a single school "division" by the State Board of Education,[7] and this arrangement was still in effect at the time of the District Court's order challenged in this case.

This lawsuit began in 1965, when a complaint was filed on behalf of Negro children seeking an end to state-enforced racial segregation in the Greensville County school system. Prior to 1965, the elementary and high schools located in Emporia served all white children in the county, while Negro children throughout the county were assigned to a single high school or one

[6] Emporia was entitled under state law to establish an independent school system when it became a city in 1967, but it chose not to do so because, according to the testimony of the chairman of the city school board, a separate system did not seem practical at the time. In a letter to the county Board of Supervisors in July 1969, the Emporia City Council stated that it had authorized a combined system in 1968 because it believed that "the educational interest of Emporia citizens, their children and those of the citizens and children of Greensville County, could best be served by continuing a combined City-County school division, thus giving students from both political subdivisions full benefits of a larger school system."

[7] Under Virginia law as it stood in 1969, the school "division" was the basic unit for the purpose of school administration. See Code of Va., §§ 22–30, 22–34, 22–100.1.

of four elementary schools, all but one of which were located outside the Emporia town boundary. In January, 1966, the District Court approved a so-called "freedom of choice" plan that had been adopted by the county in April of the previous year. *Wright* v. *School Board of Greensville County*, 252 F. Supp. 378. No white students ever attended the Negro schools under this plan, and in the 1968–1969 school year only 98 of the county's 2,510 Negro students attended white schools. The school faculties remained completely segregated.

Following our decision in *Green* v. *County School Board*, 391 U. S. 430, holding that a freedom of choice plan was an unacceptable method of desegregation where it failed "to provide prompt and effective disestablishment of a dual system," *id.*, at 438, the petitioners filed a motion for further relief. The District Court ordered the county to demonstrate its compliance with the holding in *Green*, or to submit a plan designed to bring the schools into compliance. After various delays, during which the freedom of choice system remained in effect, the county submitted two alternative plans. The first would have preserved the existing system with slight modifications, and the second would have assigned students to schools on the basis of curricular choices or standardized test scores. The District Court promptly rejected the first of these proposals, and took the second under advisement. Meanwhile, the petitioners submitted their own proposal, under which all children enrolled in a particular grade level would be assigned to the same school, thus eliminating any possibility of racial bias in pupil assignments. Following an evidentiary hearing on June 23, 1969, the District Court rejected the county's alternative plan, finding that it would "substitute . . . one segregated school system for another segregated school system." By an order dated June 25, the court ordered the county to implement

the plan submitted by the petitioners, referred to by the parties as the "pairing" plan, as of the start of the 1969–1970 school year.[8]

Two weeks after the District Court entered its decree, the Emporia City Council sent a letter to the county Board of Supervisors announcing the city's intention to operate a separate school system beginning in September. The letter stated that an "in-depth study and analysis of the directed school arrangement reflects a totally unacceptable situation to the Citizens and City Council of the City of Emporia." It asked that the 1968 city-county agreement be terminated by mutual consent, and that title to school property located within Emporia be transferred to the city. The letter further advised that children residing in the county would be permitted to enroll in the city schools on a tuition basis.[9] At no time during this period did the city officials meet with the county council or school board to discuss the implementation of the pairing decree, nor did they inform the District Court of their intentions with respect to the separate school system.

The county school board refused either to terminate the existing agreement or to transfer school buildings to Emporia, citing its belief that Emporia's proposed action was "not in the best interest of the children in

[8] The plan was later modified in certain respects at the request of the county school board, and as modified it has been in operation since September 1969. Because the four schools located outside Emporia's city limits are all in close proximity to the city, the "pairing" plan apparently involved little additional transportation of students.

[9] The District Court took special note of this transfer arrangement in its memorandum accompanying the preliminary injunction issued in August 1969. At the time of the final hearing, however, the respondents assured the court that if allowed to operate a separate system, they would not permit transfers from the county without prior permission of the court.

Greensville County." The City Council and the City School Board nevertheless continued to take steps toward implementing the separate system throughout the month of July. Notices were circulated inviting parents to register their children in the city system, and a request was made to the State Board of Education to certify Emporia as a separate school division. This request was tabled by the State Board at its August meeting, "in light of matters pending in the federal court."

According to figures later supplied to the District Court, there were 3,759 children enrolled in the unitary system contemplated by the desegregation decree, of whom 66% were Negro and 34% were white. Had Emporia established a separate school system, 1,123 of these students would have attended the city schools, of whom 48% were white. It is undisputed that the city proposed to operate its own schools on a unitary basis, with all children enrolled in any particular grade attending the same school.

On August 1, 1969, the petitioners filed a supplemental complaint naming the members of the Emporia City Council and the City School Board as additional parties defendant,[10] and seeking to enjoin them from withdrawing Emporia children from the county schools. At the conclusion of a hearing on August 8, the District Court found that the establishment of a separate school system by the city would constitute "an impermissible

[10] Because the county school board had ultimate responsibility for the administration of the schools under the combined system, the members of the Emporia school board were not originally parties to the lawsuit. But the District Court's desegregation decree bound both county officials "and their successors," and the District Court treated the Emporia school board, insofar as they intended to replace the county board as administrators of part of the system under court order, as "successors" to the members of the county board.

interference with and frustration of" its order of June 25, and preliminarily enjoined the respondents from taking "any action which would interfere in any manner whatsoever with the implementation of the Court's order heretofore entered. . . ."

The schools opened in September under the pairing order, while Emporia continued to work out detailed plans and budget estimates for a separate school system in the hope that the District Court would allow its implementation during the following school year. At a further hearing in December, the respondents presented an expert witness to testify as to the educational advantages of the proposed city system, and asked that the preliminary injunction be dissolved. On March 2, 1970, the District Court entered a memorandum opinion and order denying the respondents' motion and making the injunction permanent. 309 F. Supp. 671. The Court of Appeals for the Fourth Circuit reversed, 442 F. 2d 570, but stayed its mandate pending action by this Court on a petition for certiorari, which we granted. 404 U. S. 820.

II

Emporia takes the position that since it is a separate political jurisdiction entitled under state law to establish a school system independent of the county, its action may be enjoined only upon a finding either that the state law under which it acted is invalid, that the boundaries of the city are drawn so as to exclude Negroes, or that the disparity of the racial balance of the city and county schools of itself violates the Constitution. As we read its opinion, the District Court made no such findings, nor do we.

The constitutional violation that formed the predicate for the District Court's action was the enforcement until 1969 of racial segregation in a public school sys-